

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42140

COLORADO WHEAT ADMINISTRATIVE COMMITTEE, COLORADO  
ASSOCIATION OF WHEAT GROWERS, COLORADO WHEAT RESEARCH  
FOUNDATION, AND KCVN, LLC  
v.  
V AND S RAILWAY, LLC

Digest:<sup>1</sup> The Board orders V and S Railway, LLC to refrain from removing tracks on a portion of its line until the Board rules on a pending motion for preliminary injunction.

Decided: October 31, 2014

On October 28, 2014, the Colorado Wheat Administrative Committee (CWAC), the Colorado Association of Wheat Growers (CAWG), the Colorado Wheat Research Foundation (CWRP), and KCVN, LLC (KCVN) (collectively, the Colorado Interests) filed a complaint alleging that V and S Railway, LLC (V&S) has violated 49 U.S.C. §§ 11101 and 10903 by removing certain track and related assets from a segment (the Western Segment) of V&S's 121.9-mile line known as the Towner Line.<sup>2</sup>

Concurrently, the Colorado Interests filed a Motion for Emergency and Preliminary Injunctive Relief, in which they seek: (1) a preliminary injunction barring V&S from “dismantling and removing the tracks and related assets of the line of railroad that is the subject of the Complaint in this proceeding until V&S receives formal abandonment authority from the Board” (the Preliminary Injunction), and (2) “an order, on an emergency basis before 5:00 EST [sic] on October 31, 2014, enjoining [V&S] from dismantling and removing the tracks and related assets of the line of railroad that is the subject of the Complaint in this proceeding until

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> The Towner Line extends between milepost 747.5 near Towner, Colo., and milepost 869.4 near NA Junction. The Western Segment of the Towner Line extends between milepost 808.3 near Haswell, Colo., and milepost 868.5, which is approximately 0.9 miles short of the Towner Line's western terminus at milepost 869.4.

the Board reviews and rules on [the Colorado Interests'] request for a Preliminary Injunction" (the Emergency Order).

In 2012, V&S obtained authority to discontinue operations over the Western Segment. V&S Ry.—Discontinuance of Serv. Exemption—in Pueblo, Crowley, & Kiowa Cntys., Colo., AB 603 (Sub-No. 2X) (STB served June 28, 2012). Also in 2012, V&S stated that it expected to seek authority "in the near future" to abandon "the western segment of the Towner Line, between NA Junction and Haswell."<sup>3</sup> To date, however, it has not done so.

In the Colorado Interests' October 28 complaint, they allege that V&S removed and sold track and associated assets of the Western Segment starting on or around August 11, 2014, shortly after KCVN made a "good faith cash offer" to buy the entire Towner Line and reactivate it for rail service. The track removal and sale was temporarily halted on August 28, 2014, when KCVN obtained a temporary restraining order (TRO) from a Colorado state court. The state court proceeding was removed to the U.S. District Court for the District of Colorado on September 3, 2014. On October 24, 2014, the U.S. Magistrate Judge ordered the TRO dissolved but delayed the effectiveness of the dissolution for five business days (to October 31, 2014) to allow KCVN to bring this matter before the Board.

The Colorado Interests thereafter filed their Complaint and their Motion for Emergency and Preliminary Injunctive Relief on October 28, 2014. In support of the Motion for Emergency and Preliminary Injunctive Relief, the Colorado Interests argue that V&S intends to resume removing and selling the track assets of the Western Segment upon dissolution of the TRO. On October 30, 2014, V&S filed a reply addressing both the Complaint and the Motion for Emergency and Preliminary Injunctive Relief.

To preserve the Board's ability to provide meaningful and effective relief on the merits should the Colorado Interests prevail on their Motion for Preliminary Injunction, it is necessary to temporarily maintain the status quo as to the integrity of the physical assets of the Western Segment while the Board expeditiously considers the motion. Accordingly, we will grant the Emergency Order sought by the Colorado Interests and enjoin V&S from dismantling and removing any tracks or related assets of the Western Segment until the Board has ruled on the Motion for Preliminary Injunction.

This action will not significantly affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1. V&S is enjoined from dismantling and removing any tracks or related assets on the Western Segment until the Board has ruled on the Colorado Interests' Motion for Preliminary Injunction.

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<sup>3</sup> Pet. for Exemption 8-9, V&S Ry.—Acquis. & Operation Exemption—Colo. Dep't of Transp., FD 35664 (filed Aug. 15, 2012).

2. This decision is effective on the date of service.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.